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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,417	12/17/2003	Jerry D. Ham		8341

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T kLaw
Technology Law Offices of Virginia
Virginia Tech Corporate Research Center
1872 Pratt Drive, Suite 1100
Blacksburg, VA 24060-6363

EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/738,417

Applicant(s)

HAM, JERRY D.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/17/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Note that claim 4 (second occurrence) has been renumbered as claim 5 pursuant to 37 CFR 1.123.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 3-4, use of the phrase “such as windows and doors” makes the claim indefinite as to what structures are intended to be inclusive in such terminology and as to how closely related to windows and doors they must be to infringe the claims. Throughout the claims, use of the phrase “inert gas” to describe carbon dioxide is not an accurate description. The term inert is defined as (having little or no ability to react). This is not an accurate description of carbon dioxide that is commonly given off as a biochemical product in animal respiratory processes and is commonly used by plants as a source in plant biochemical processes. Claim 1, line 6, requires a comma.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 6, 10, 12-15, and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Grant.

Grant discloses a gas neutralizing system and associated method comprising:

- | | |
|---|-----------------------|
| a) a source of gas; | 20, col. 3, lines 2-6 |
| b) means to create an opening in a space; | 26, 36 |

- c) battering ram or hollow lance; 26
- d) a valve; col. 5, lines 42-46
- e) creating an opening in said space; col. 2, lines 12-24
- f) inserting the gas into the space; and col. 3, lines 1-5
- g) venting the gas to provide air to allow consciousness. col. 4, lines 18-26

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grant in view of Brunn et al..

Grant applies as previously recited. However, undisclosed is a disabling gas that is carbon dioxide. Brunn et al. (abstract) teach a disabling gas that is carbon dioxide. Applicant is substituting one disabling gas for another in an analogous art setting as explicitly taught by both the primary and secondary references (see col. 3, lines 1-5 of Grant and col. 1, lines 13-27 of Brunn et al.). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Brunn et al. to the Grant neutralizing assembly and have a neutralizing assembly with a different type of disabling gas.

7. Claims 10, 12-15, and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Graham.

Graham discloses a gas neutralizing system and associated method comprising:

- a) a source of gas; 16, 18

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- b) means to create an opening in a space; 12
- c) battering ram or hollow lance; 12
- d) a valve; col. 5, lines 8-12
- e) creating an opening in said space; col. 5, lines 4-7
- f) inserting the gas into the space. see fig. 3

8. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham in view of Grant.

Graham applies as previously recited. However, undisclosed is venting the gas from the space to permit use by occupants. Grant teaches venting the gas from the space to permit use by occupants (col. 4, lines 18-26). Applicant is selecting a means known in this art to enable usage of the space after gas entry into the space and putting it to use as it is already commonly known to be used in this art. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Grant to the Graham neutralizing system and have a neutralizing system that is vented for usage.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Graham in view of Brunn et al..

Graham applies as previously recited. However, undisclosed is a disabling gas that is carbon dioxide. Brunn et al. (abstract) teach a disabling gas that is carbon dioxide. Applicant is substituting one disabling gas for another in an analogous art setting as explicitly taught by the secondary references (see col. 1, lines 13-27 of Brunn et al.). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Brunn et

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al. to the Graham neutralizing assembly and have a neutralizing assembly with a different type of disabling gas.

10. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graham in view of Grant as applied to claims 1-7 above, and further in view of Brunn et al..

Graham and Grant as previously recited. However, undisclosed is a disabling gas that is carbon dioxide. Brunn et al. (abstract) teach a disabling gas that is carbon dioxide. Applicant is substituting one disabling gas for another in an analogous art setting as explicitly taught by the secondary references (see col. 1, lines 13-27 of Brunn et al.). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Brunn et al. to the Graham in view of Grant neutralizing assembly and have a neutralizing assembly with a different type of disabling gas.

11. Claims 10-15 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by McDanolds et al..

McDanolds et al. discloses a neutralizing system comprising:

- | | |
|--|------------------------|
| a) a source of inert gas; | 3, col. 1, lines 30-31 |
| b) a battering ram or hollow lance; | 41, 51 |
| c) means for delivering the inert gas; | 41, 51 |
| d) a tank and delivery hose; and | 3, 9 |
| e) an adjustable valve. | 19 |

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-2, 5-7, 10-11, 17, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Suchar.

Suchar discloses a gas neutralizing system and associated method comprising:

- | | |
|---|---------------------|
| a) a source of gas; | 26 |
| b) means to create an opening in a space; | col. 2, lines 50-52 |
| | (equivalent means) |
| c) a valve; | 30 |
| d) inserting the gas into the space; | see abstract |
| e) valve operated remotely by pilot; and | col. 2, lines 44-47 |
| f) venting the system to return to consciousness. | col. 3, lines 46-50 |

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rammy Jr. disclose another state of the art neutralizing method.

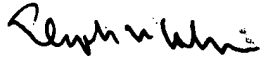
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877. The examiner can normally be reached on Tuesday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

April 9, 2005
SMJ